



CALIFORNIA STATE PERSONNEL BOARD

801 Capitol Mall • Sacramento, California 95814

NOTICE OF PROPOSED ADOPTION OF REGULATIONS AND STATEMENT OF REASONS

**California Code of Regulations
Title 2, Administration
Division 1, Administrative Personnel**

DATE: December 14, 1999

TO: ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS

SUBJECT: Equal Opportunity Goals for Minorities and Women

AUTHORITY:

Under authority established in Section 18701, Government Code, the State Personnel Board (Board) has proposed to change Title 2 of the California Code of Regulations. Government Code Section 19790 requires State agencies and departments to establish annual employment goals for minorities and women; however, this statute does not provide any procedural guidance on how to establish employment goals. These proposed regulations are needed to provide the procedural guidance necessary to comply with these statutory requirements.

REFERENCE:

These regulations are amended to implement, interpret, and/or make specific Sections 11092.5, 18523, 19702.1, 19790, and 19791 of the Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2 et seq.; "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," *Federal Register*, October 30, 1997; *Uniform Guidelines on Employee Selection* (1978), 29 CFR Part 1607; *Hazelwood School District v. United States* (1977), 433 U.S. 299, at 308, n 14; *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986); *Johnson v. Santa Clara Transportation Agency*, 480 U.S. 616 (1987); and *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989).

PUBLIC HEARING:

Date and Time:	February 9, 2000 from 9:15 a.m. to 10:15 a.m.
Place:	Auditorium 801 Capitol Mall, Room 150 Sacramento, California
Purpose:	To receive oral public comments about this action.

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WRITTEN PUBLIC COMMENT PERIOD:

The public comment period for written comments will close February 8, 2000 at 5:00 p.m. This is to allow time for Board staff to provide copies of any written comments to Board members for their consideration at the time of the hearing. Any person may submit written comments about the proposed changes. To be considered by the Board, written comments must be received at the attention of Steve Unger at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, before the close of the written comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to Steve Unger at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, or telephone (916) 654-0842.

DOCUMENTS RELIED UPON:

"Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," *Federal Register*, October 30, 1997.

Uniform Guidelines on Employee Selection (1978), 29 CFR Part 1607.

Hazelwood School District v. United States (1977), 433 U.S. 299, at 308, n 14.

Wygant v. Jackson Board of Education, 476 U.S. 267 (1986).

Johnson v. Santa Clara Transportation Agency, 480 U.S. 616 (1987).

Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)

Recommended Procedures For Establishing Equal Employment Opportunity Goals and Timetables, revised March 1999, by the State Personnel Board.

Executive Order W-124-95, issued by Governor Pete Wilson on June 1, 1995, which requires all State agencies to draft 1995-96 employment goals and timetables based on the employment pool possessing the necessary qualifications for the particular job classification at issue, rather than on general work force parity.

These documents are available for review during normal business hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814.

IDENTIFIED ALTERNATIVES THAT WOULD LESSEN ADVERSE IMPACT ON SMALL BUSINESSES:

No adverse impact on small businesses is anticipated from the implementation of the proposed regulations. Therefore, no alternatives which would lessen the impact on small businesses have been identified.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Savings to State Agencies:

This action proposes the adoption of new regulations for California Code of Regulations (CCR), Title 2, that are, in part, definitions derived from existing statutes and regulations. In addition, several other proposed new definitions and regulations are interpretations of federal and State statutes and regulations.

This action will create a necessary consistency in the performance of personnel recruitment and hiring of minorities and women; however, no fiscal impact exists because this rulemaking action essentially codifies existing Board practices.

Determination of Mandate :

The Board has determined that the proposed regulations do not impose a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because these regulations do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The proposed regulations will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a State policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

Impact on Housing Costs:

The proposal will not affect housing costs.

Impact on Businesses:

This proposal will not result in a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

Further, these proposed regulations contain no new reporting, recordkeeping and other compliance requirements that would result from the proposed action.

Cost Impact on Private Persons or Entities:

The proposal will not require private persons or entities to incur additional costs in complying with the proposal.

Costs or Savings in Federal Funding to the State:

No impact.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed:

No costs to local agencies or school districts are required to be reimbursed.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

This proposal does not impose nondiscretionary costs or savings on local agencies.

ASSESSMENT:

The adoption of the proposed regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

DETERMINATION:

The Board must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

AVAILABILITY OF PROPOSED TEXT AND ISR:

The text of the regulations, the Initial Statement of Reasons and other related material are available upon request directed to the Board's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, the Board will make the full text of the changed regulation(s) available for at least 15 days before the date the regulations are permanently adopted.

INFORMATIVE DIGEST:

Government Code Section 18701 authorizes the Board to prescribe, amend and repeal regulations for the administration and enforcement of the Civil Service Act.

Government Code Sections 19790-99 enumerate the requirements of the State Civil Service Affirmative Action Program, including the requirement that State agencies and departments establish employment goals and timetables to eliminate identified underutilization of minorities and women in employment.

Government Code Section 19702.1 requires that hiring and promotion in the civil service conform to the Federal Civil Rights Act of 1964. Title VII of the Act prohibits practices, procedures or policies that have an adverse impact on employees or applicants for employment unless they are justified by business necessity.

The U.S. Supreme Court has held in a number of decisions affecting race conscious affirmative action programs that job applicant availability for goal setting purposes must be determined using Relevant Labor Force (RLF) comparisons as opposed to comparisons with the general population or general labor force. Cases include *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986); *Johnson v. Santa Clara Transportation Agency*, 480 U.S. 616 (1987); and *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989).

In *Hazelwood School District v. United States*, 433 U.S. 299 (1977), the U.S. Supreme Court accepted statistical significance (and the method of calculation) as an appropriate standard to use for determining whether underutilization is substantial enough to justify taking race-conscious affirmative action.

The Federal *Uniform Guidelines on Employees Selection* (1978), 43 FR 38297-8, provides standards and procedures for evaluating whether there is adverse impact against minority group members or women in an employer's selection process that may indicate illegal employment discrimination.

Government Code Section 18523 defines the term "class".

Government Code Section 19792(b) requires the Board to develop, implement, and maintain affirmative action and equal employment opportunity guidelines.

Government Code Section 11092.5 requires the separate tabulation of statistical information for Pacific Islanders. Prior to enactment of this section, Pacific Islander information was combined with information for Asians.

Definitions of individual minority groups covered by the proposed new regulations were previously promulgated by the Board in Rule 470.1. They are being repeated in the proposed Regulation 547.80, with the exception of the definition for "Pacific Islander," to facilitate understanding of the application of the employment goals and timetable process. The definition for "Pacific Islander" has been revised to be consistent with the new definition to be used in the 2000 Census as indicated in *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, published in the Federal Register (October 30, 1997).

This rulemaking action will create a necessary consistency in the performance of personnel recruitment and hiring of minorities and women.

INITIAL STATEMENT OF REASONS:

Currently, there are no regulations to implement the provisions of Government Code Section 19790 requiring State agencies and departments to establish annual employment goals for minorities and women. These statutes do not provide any procedural guidance on how to establish employment goals. Regulations are needed to provide the procedural guidance necessary to comply with the statutory requirements.

In particular, subsections (d), (e), and (f) of Section 547.81 are needed to provide guidance to departmental staff and administration in setting the actual numerical goals for resolving underutilization problems. A period of ten years is considered by the Board to constitute sufficient time for most underutilization problems to be resolved.

LAURA M. AGUILERA, Chief
Personnel Resources and Innovations Division

Attachment: Text of Proposed Regulations



CALIFORNIA STATE PERSONNEL BOARD

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Regulations Governing Equal Employment Opportunity Goals

All new text intended for printing is indicated by underline.

Title 2. ADMINISTRATION

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

Subchapter 1.7. Equal Employment Opportunity Goals

Article 1. Equal Employment Opportunity Goals for Minorities and Women

§ 547.80. Definitions.

For purposes of this Article:

(a) “Class” means a group of positions as defined in Government Code Section 18523.

(b) “Employment Goal” means a projected level of achievement in the percentage representation of minorities and women which takes into consideration their availability in the relevant labor force and the appointing authority’s ability to hire.

(c) “Minority Group” includes persons who are members of one of the following racial/ethnic groups: American Indian/Native American, Asian, Black/African American, Filipino, Hispanic, and Pacific Islander. These groups are defined as follows:

(1) “American Indian/Native American” means any person who is a member of an American Indian Tribe or band recognized by the Federal Bureau of Indian Affairs, or has at least one-quarter American Indian blood quantum of tribes or bands indigenous to the United States or Canada.

(2) “Asian” means any person whose origin is the Far East, Southeast Asian or the Indian subcontinent and includes, for example, China, Japan, and Korea.

(3) “Black/African American” means any person whose origin is any of the Black racial groups of Africa.

(4) _____ “Filipino” means any person whose origin is the Philippine Islands.

(5) _____ “Hispanic” means any person whose origin is Mexico, Puerto Rico, Cuba, Spain, or the Spanish-speaking countries of Central or South America. It does not include persons of Portuguese or Brazilian origin, or persons who acquired a Spanish surname;

(6) _____ “Pacific Islander” means any person whose origin is in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(d) _____ “Occupational Group” means a group of jobs or classes that includes the entry level, other working levels, and supervisory levels within the same general occupational field of work;

(e) “Relevant Labor Force” means the pool of individuals who possess the requisite qualifications for the job within the geographic area in which the agency can reasonably expect to recruit.

(f) “Statistically Significant” means the degree of underutilization is equal to or greater than the .05 level of significance using the accepted methods of statistical analysis referred to by the U.S. Supreme Court in *Hazelwood School District v. United States* (1977), 433 U.S. 299, at 308, n 14.

(h) “Timetable” means an estimate of the time required to meet specific employment goals.

(i) “Underutilization” means having fewer persons of a particular group in an occupation or at a level in a department than would reasonably be expected by their availability in the relevant labor force.

(j) “White” means any person whose origin is Caucasoid.

(k) _____ “Work Force” means incumbents in full-time and other-than-full-time positions in the state civil service employed by the appointing authority.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Sections 11092.5, 18523, 19702.1, 19790 and 19791, Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2 et seq.; *Hazelwood School District v. United States* (1977), 433 U.S. 299, at 308, n 14; and “Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,” *Federal Register*, October 30, 1997.

§547.81. Establishment of Annual Equal Employment Opportunity Goals for Minorities and Women.

Each appointing authority is responsible for annually establishing or modifying equal employment opportunity goals and timetables for civil service classes or occupational groups where statistically significant underutilization of minority group members or women exist. Annual employment goals shall be based on all of the following:

(a) A work force analysis that identifies the classes, occupational groups, relevant geographic recruitment area and state work force information as specified in the Work Force Analysis Section, and the referenced Appendices in that section, of the *Recommended Procedures For Establishing Equal Employment Opportunity Goals and Timetables* (Procedures), revised March 1999, by the State Personnel Board. This document is hereby incorporated by reference in its entirety.

(b) An availability analysis that identifies the options for measuring relevant labor force availability, evaluates the options for measuring the composition of the relevant labor force, and identifies the data for setting entry and promotional goals as specified in the Availability Analysis Section, and the referenced Appendices in that section, of the Procedures.

(c) A utilization analysis that compares the state work force representation with the relevant labor force as specified in the Utilization Analysis Section, and the referenced Appendices in that section, of the Procedures. If the representation of a minority group or of women is greater in the relevant labor force than in the state work force, there is an underutilization. An underutilization may be identified as a percentage and/or the nearest whole number of employees that would be required to eliminate the underutilization. Appointing authorities shall establish employment goals for any group that has a statistically significant underutilization.

(d) The appointing authority's expected number of employment opportunities in entry classes, within the appropriate relevant geographic area, during the year. In determining this, consideration shall be given to such factors as anticipated turnover, new positions to be established, budget reductions, layoffs, hiring freezes, and other hiring constraints.

(e) The availability of qualified candidates to fill expected job openings. In determining this, consideration shall be given to such factors as the size and composition of current eligible lists; anticipated new recruitment efforts; examinations scheduled; eligible lists established during the year; and transfer and reinstatement opportunities.

(f) The number of years, up to a maximum of ten years, that are anticipated to achieve any employment goal required in (c). Goal timelines in excess of ten years shall be submitted with documentation justifying the extended timeframe.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 11092.5, 19702.1 and 19790, Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2 et seq.; *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986); *Johnson v. Santa Clara Transportation Agency*, 480 U.S. 616 (1987); and *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989).